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December 17, 1999

DOCKET FILE COPY ORIGINAL

Magalie Roman Salas  
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Federal Communications Commission  
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VIA HAND DELIVERY

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DEC 17 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: CC Docket No. 80-286

Dear Ms. Salas:

Transmitted herewith, on behalf of TDS Telecommunications Corporation (TDS Telecom), are an original and four copies of comments on the State Joint Board members' request in the above-referenced rulemaking proceeding. A diskette copy of the comments is also being hand delivered to the FCC's contractor, ITS, Inc.

In the event of any questions concerning this matter, please communicate with this office.

Very truly yours,

*Margot Smiley Humphrey*  
Margot Smiley Humphrey

Enclosure

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

**RECEIVED**  
**DEC 17 1999**  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Jurisdictional Separations Reform and	)	CC Docket No. 80-286
Referral to the Federal-State Joint Board	)	

**Comments of TDS Telecommunications Corporation**

TDS Telecommunications Corporation (TDS Telecom) submits these comments in response to the Commission's December 1, 1999 invitation for comments on the "Request for the FCC to Notice and Solicit Comment on their Separations Simulations Cost Study Tool" (Request) filed October 27, 1999. TDS Telecom owns 104 small, primarily rural incumbent local exchange carriers (ILECS) in 28 states. All of the TDS Telecom ILECs qualify as "rural telephone companies" under the definition added to the Communications Act in 1996.<sup>1</sup>

TDS Telecom supports the Separations Joint Board in its efforts to conduct a thorough review and adopt modifications necessary to harmonize the jurisdictional separations process with the rapid changes in regulation and the marketplace that are reshaping telecommunications. TDS Telecom has participated in the proceedings so far and intends to participate in upcoming phases of separations review. TDS Telecom agrees that a workable separations process remains necessary because of the dual authority over telecommunications exercised by state and federal authorities and the constitutional prohibition against confiscation. Indeed, TDS Telecom believes that comprehensive separations reform must be coordinated and integrated with universal service-,

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<sup>1</sup> 47 U.S.C. §3(37).

access-, regulatory flexibility- and competition-focused reforms to ensure an integrated, "holistic" regulatory approach and a marketplace that meets the needs of rural subscribers.

However, thorough, comprehensive and integrated review takes time. TDS Telecom is concerned, in the context of separations right now, that the Joint Board and the Commission have not yet adopted an interim plan to halt the mounting jurisdictional misallocations fueled by the explosive growth of the Internet economy and society. A major source of this concern is that the Commission has adopted inconsistent positions: it has held that Internet traffic is predominantly interstate, but has retained the traditional separations treatment, never adopted by a joint board, that costs associated with Internet will continue to be allocated to the intrastate jurisdiction.<sup>2</sup>

In the Request, the state members have estimated the possible effects of a permanent change in allocations to reflect the Commission's rulings regarding Internet use in the reciprocal compensation and GTE ADSL tariff rulings. TDS Telecom recognizes that analysis of the impact of any permanent separations changes will require cost analysis. However, we confine our comments here to urging the Joint Board and the Commission to take prompt interim action to prevent the Internet distortion of jurisdictional allocations caused by using relative use allocation factors. Without prompt interim action, the distortion will continue to increase as Internet usage continues to grow, while the Joint Board completes the responsible and thorough review of separations that will lead it to the comprehensive, long term separations reform the Commission has asked it to consider. The record in this proceeding already establishes that the allocation factors based on relative use are shifting Internet costs to the intrastate jurisdiction that properly belong in

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<sup>2</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation For ISP-Bound Traffic, FCC 99-38, CC Docket Nos. 96-98, 99-68, 14 FCC Rcd 3689, ¶¶ 18, 23, 36 (rel. Feb.26, 1999).

the intrastate jurisdiction for consistency with the actual usage patterns for Internet traffic and the Commission's ruling on the jurisdictional nature of that traffic.<sup>3</sup>

TDS Telecom and others have urged the Joint Board to preserve the status quo before the Internet distortion began to burgeon by freezing the allocation factors as soon as possible at pre-Internet allocation levels. We renew that urgent request.

While the Joint Board and its state members are right to be concerned with studying the impacts of long term changes, the current record is already sufficient to support an immediate interim freeze of the allocation factors. The D.C. Circuit has held that "[s]ubstantial deference must be accorded an agency when it acts to maintain the status quo so that the objectives of a pending rulemaking proceeding will not be frustrated."<sup>4</sup> In that case -- as here -- the record showed that " 'existing, possibly inadequate rules' ha[ve] to be frozen to avoid 'compounding present difficulties.' " <sup>5</sup> In MCI, the court upheld the interim SPF freeze policy adopted by the Commission "to preserve its ability to implement comprehensive separations revisions in a manner that would cause the least upheaval in the industry," when, " because SPF had not performed as an allocative factor as had been originally envisioned," there had been "an unanticipated rise in the percentage of interstate

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<sup>3</sup> See, e.g., Letter to Lawrence E. Strickling from Richard A. Askoff dated October 5, 1999 (data request showed that 18% of 1998 local/intrastate dial equipment minutes are Internet and that allocation to the intrastate jurisdiction "produces a \$170 million misallocation of costs to the state jurisdiction for NECA pool members.") See also, letter to Dorothy Attwood from Gina Harrison dated October 28, 1999.

<sup>4</sup> MCI Telecommunications Corporation v. FCC, 750 F2d 135, 141 (D.C. Cir. 1984) (footnote [29] omitted) (MCI).

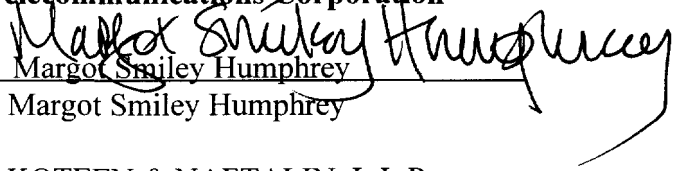
<sup>5</sup> Ibid.

costs.”<sup>6</sup> The only difference here is that it is the intrastate jurisdiction that the distortions are increasing. An interim freeze is necessary because the growth of Internet usage, combined with the traditional misclassification of Internet traffic as intrastate, has prevented the allocation factors from performing “as originally envisioned,” again causing an “unanticipated rise,” but this time in the percentage of intrastate costs.

The point is that the Joint Board and the Commission already have the information they need to freeze the allocation factors now, as an interim measure to stop the continuing unjustified and growing cost shifts to the intrastate jurisdiction while they complete their comprehensive separations review and craft appropriate long term changes. Therefore, TDS Telecom urges the state and federal members of the Joint Board to recommend and the FCC to adopt an immediate interim freeze in the separations factors to stanch the increasing jurisdictional hemorrhage of interstate costs into the intrastate jurisdiction.

Respectfully submitted,

**TDS Telecommunications Corporation**

By:  Margot Smiley Humphrey  
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December 17, 1999

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<sup>6</sup> Ibid.

## CERTIFICATE OF SERVICE

I, Victoria C. Kim, of Koteen & Naftalin, hereby certify that true copies of the foregoing TDS Telecom's Comments on Jurisdictional Separations Reform, CC Docket No. 80-286, have been served on the parties listed below, via first class mail, postage prepaid on the 17th day of December 1999.

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